

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**STATE ex rel. STATE OF MISSOURI,
DEPARTMENT OF SOCIAL SERVICES,
FAMILY SUPPORT DIVISION**

RELATOR,

**v.
THE HONORABLE PATRICK W.
CAMPBELL**

RESPONDENT.

DOCKET NUMBER WD75408

DATE: November 27, 2012

Appeal From:

Jackson County Circuit Court
The Honorable Parick W. Campbell, Judge

Appellate Judges:

Writ Division: Cynthia L. Martin, Presiding Judge, Victor C. Howard, Judge and Thomas H. Newton, Judge

Attorneys:

Jo-Ellen Horn and Nicolas Taulbee, Kansas City, MO, for relator.
Donald H. Loudon, Jr., Independence, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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No. WD75408

Jackson County

Before Writ Division: Cynthia L. Martin, Presiding Judge, Victor C. Howard, Judge and Thomas H. Newton, Judge

State ex rel. State of Missouri, Department of Social Services, Family Support Division ("Relator") seeks a permanent writ of prohibition to prevent enforcement of an order issued by the Honorable Patrick W. Campbell ("Respondent") directing the State to advance the cost of genetic paternity testing in an action filed by Gregory Alan Fields ("Fields") seeking to set aside a judgment of paternity pursuant to section 210.854. We issued a preliminary writ of prohibition.

Preliminary writ of prohibition is made absolute.

Writ Division holds:

1. Section 210.854 was enacted in 2009, and creates a right to seek to set aside an otherwise final, non-appealable judgment determining paternity and to unwind the financial and criminal ramifications of non-support resulting from the judgment.

2. Section 210.854.3 provides that genetic paternity testing costs required to contest a final judgment of paternity *shall* be paid by the petitioner, in this case, Fields.

3. Respondent entered an order requiring the State to advance the cost of genetic paternity testing. By the plain language of the section 210.854.3, Respondent did not have the authority or the discretion to impose the obligation to pay for genetic paternity testing on the State, even temporarily.

4. Respondent argues that Fields is indigent and cannot be required to pay for genetic paternity testing pursuant to section 514.040.1. However, it is immaterial whether Fields has been permitted to pursue this action *in forma pauperis*, or whether the cost of genetic paternity testing is a fee, tax, or charge within the scope of section 510.040.1, as there is no authority in

any event to shift Fields's statutory obligation to pay for section 210.854 genetic paternity testing to the State.

5. Absent statutory authority, costs cannot be recovered in state courts from the state of Missouri or its agencies or officials.

6. The State can be assessed the obligation to pay the cost of genetic paternity testing pursuant to the authority of section 210.834.4, a provision relating to the initial determination of paternity. However, that provision has no application to Fields's section 210.854 proceeding, which seeks to set aside a final judgment determining paternity.

7. Where an indigent cannot be compelled to pay a fee or cost by the operation of section 510.040, our courts have held that the county treasury where the circuit court sits is obligated to pay the cost pursuant to section 476.270.

8. Respondent is prohibited from enforcing that portion of his Order requiring the State to advance or otherwise pay the cost of genetic paternity testing.

Opinion by Cynthia L. Martin, Judge

November 27, 2012

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